IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2101 OF 2006

Raval Tiles & Marbles Pvt. Ltd.] .. Petitioner

Versus

The State of Maharashtra] .. Respondent

Mr. N.H. Seervai, senior counsel with Ms. Rupa A. Chowdhari i/b M/s. Tamhane & Co. for the petitioner.

Ms. Madhubala Kajale, AGP, for the respondent.

CORAM: S.B. MHASE, &
R.S. MOHITE, JJ.

DATED: 23RD APRIL, 2007

P.C. :

. Heard both sides.

2. The question of luxury tax and its vires on goods was considered by the Apex Court in the case of **Godfrey Philips India Limited & Ors. Vs. State of U.P. & Ors.** by judgment dated 20th January, 2005 and it has been held by the Apex Court that the luxury tax on goods is not permissible. Following the said judgment, this Court in a group of Petitions headed by Writ Petition No.2481 of 2002 in the matter of **Bombay Silk Retail Benares & Silk Merchants Welfare Association Vs. State**

of Maharashtra in Writ Petition 2481 of 2002 & ors. by judgment dated 4th February, 2005, has also held on the basis of the concessions given by the Advocates on both sides that the challenge is squarely covered and answered by **Godfrey Philips India Limited** (supra) and, therefore, the Division Bench of this Court, in the above referred group of Writ Petitions, granted the relief in terms of prayer clause (a), however, without costs. It is further made clear therein that if any of the petitioners in the said group of Writ Petitions have collected any amount towards luxury tax from the customers after obtaining interim orders from the Court, they would pay the said amount to the State Government. Thus, this Court has made it clear that if after getting interim orders from this Court, any of the petitioners have collected the luxury tax from the customers then, in those circumstances, those petitioners will have to pay the said amount to the State Government. This clarification means that if the luxury tax had not been recovered after interim orders, then in those circumstances, there is no obligation to pay it to the State Government.

3. In the present Petition, however, we are not concerned with this aspect. In this Petition, we are concerned with the question viz. the refund of any

luxury tax which was already collected by the State Government. The petitioners state that they have preferred an application dated 9th May, 2005, claiming refund of Rs.17,82,727/- which is at Exhibit-B to the Petition at Page 100 and the grievance of the petitioner is that the said application is not being decided and no answer is given by the State Government. Needless to state that after the above referred declaration by the Apex Court and this Court, the State Government is not supposed to recover/retain the amount of luxury tax on goods. However, the fact remains that if the luxury tax has already been recovered by the party like the petitioner from the customer while selling the goods, then in such circumstances, the vendor or a person like the petitioner is not entitled for the refund of the said luxury tax because under these circumstances, the refund would amount to an undue enrichment which is not permissible in law. Therefore, the authority viz. the Commissioner of Sales Tax to whom the application dated 9th May, 2005 has been addressed or any Senior Officer deputed by him is under an obligation to make an enquiry into the aspect as to whether the petitioner or the persons like the petitioner who are claiming refund have collected directly or indirectly the said luxury tax from their customers and the persons like the petitioner who are claiming refund are also under an obligation to

satisfy the authority that the said amount of luxury tax has not been recovered by them from the customers and on being satisfied in this respect, the question of refund has not been decided by the Commissioner of Sales Tax or any other competent authority of the State Government. We, therefore, find that this Petition can be disposed of with direction to the respondent that they should make an enquiry into the application dated 9th May, 2005, on the above referred aspect viz. whether the petitioner has collected directly or indirectly the luxury tax from the customers while the goods were sold by them and if, on enquiry, it is found that the luxury tax has been collected by the petitioner from the customers then, in such circumstances, the respondent authority will be justified in not refunding the amount as claimed. However, if on enquiry the respondents find that the luxury tax has been recovered from the customers then in that event, the petitioner will be entitled for refund of that amount and the respondents are directed to refund that amount. However, all this will depend on a finding by the respondent as to whether the petitioner has recovered the luxury tax from the customers or not and taking into consideration the finding, the appropriate order will have to be passed.

4. In order to complete this enquiry, within a

period of two weeks from today, the petitioner shall submit the necessary documents to the respondent showing that the luxury tax has been collected from the customers or not. The respondent shall thereafter, within a period of 12 weeks, complete the enquiry and pass an appropriate speaking order.

5. With the above directions, the Writ Petition is disposed of.

Sd/-
[R.S. MOHITE, J.]

Sd/-
[S.B. MHASE, J.]